



# ***CITY COUNCIL AGENDA REPORT***

MEETING DATE: January 6, 2009

ITEM NUMBER: **VIII-1**

**SUBJECT: AMENDMENT OF TITLES 1 AND 2 RELATING TO GENERAL PROVISIONS AND ADMINISTRATION**

**DATE: DECEMBER 18, 2008**

**FROM: CITY ATTORNEY'S OFFICE**

**PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY**

**FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, 714-754-5399**

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## **RECOMMENDED ACTION:**

Give second reading and adopt attached Ordinance Amending Titles 1 and 2 of the Costa Mesa Municipal Code relating to General Provisions and Administration.

## **BACKGROUND:**

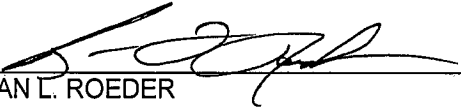
The Costa Mesa Municipal Code currently provides for the appointment of a City Attorney, but does not specify all the existing rights, powers, duties and obligations of the City Attorney, including code enforcement prosecution. At the City Council meeting on December 2, 2008, Council gave the ordinance first reading and directed staff to prepare an amendment to the ordinance adding "or his/her designee" to section 2-144.

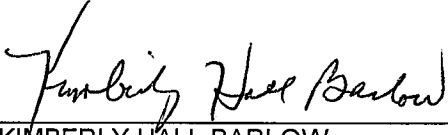
## **ANALYSIS**

The proposed ordinance restates and makes clear that when the City contracted City Attorney services, the City did not intend in any way to reduce, impair or otherwise change the powers of the City Attorney as set forth in state law, existing ordinances, council policy, practice and contract. City Attorney and prosecution services is explicitly authorized by California law to be performed by contract, and existing municipal code provides that the City Attorney may delegate his or her functions and duties to assistants and deputies as expressed in Costa Mesa Municipal Code section 1-9. The proposed ordinance collects in one place provisions detailing the existing powers, duties and obligations of the City Attorney as set forth in state law, existing ordinances, council policy, practice and contract.

## **CONCLUSION:**

The proposed ordinance is intended to restate and clarify the City's intent and the City's municipal code so that there is no further misapprehension of the rights, powers, duties and obligations of the City Attorney. The Ordinance was reviewed and approved by outside counsel Phillip Kohn of Rutan & Tucker. The City Attorney recommends that City Council adopt the Ordinance.

  
ALLAN L. ROEDER  
City Manager

  
KIMBERLY HALL BARLOW  
City Attorney

DISTRIBUTION: City Manager

ATTACHMENTS: 1 Ordinance

File Name

Date

Time

ORDINANCE NO. 08-8

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF COSTA MESA AMENDING TITLE 1 AND  
TITLE 2 OF THE COSTA MESA MUNICIPAL CODE  
RELATING TO GENERAL PROVISIONS AND  
ADMINISTRATION

WHEREAS, the City of Costa Mesa determined in 2004 to contract out its city attorney services and to eliminate its staff of in-house attorneys; and

WHEREAS, the City Council in taking the action to contract out for city attorney services did not intend to change the powers or duties of its City Attorney or the city attorney's office; and

WHEREAS, a recent court ruling, though not yet final, appears to suggest that the City's contract City Attorney has different or lesser powers than those exercised by the City's previous in-house City Attorney; and

WHEREAS, the City Council's determination to contract out for city attorney services was not intended to or did not alter in any way the powers of the City Attorney or the city attorney's office; and

WHEREAS, the City Council nevertheless believes it is prudent and appropriate to amend the Costa Mesa Municipal Code to restate and clarify the existing and continuing rights, duties and obligations of the City Attorney and the city attorney's office; and

WHEREAS, the City Council expressly declares that these restatements and clarifications do not represent any change in city law but are declaratory of existing law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 1 of the Costa Mesa Municipal Code. Section 1-9 of Chapter I, is hereby repealed and replaced in its entirety with the following:

Sec. 1-9. Exercise of power or duty by assistant or deputy.

Whenever a power is granted to or a duty imposed upon a city officer by this Code, any other ordinance, resolution, policy or contract of the city, and irrespective of whether such city officer serves as an employee of the city or is appointed by virtue of a professional services contract, the powers and duties of such officer may be exercised or the duty performed by an assistant or a deputy of the officer or by a person authorized pursuant to law by the officer, whether

such assistant or deputy or person be an employee of the city or be retained by virtue of a professional services contract, unless this Code or the ordinance, resolution, policy or contract expressly provides otherwise.

Section 2. Title 2 of the Costa Mesa Municipal Code, Section 2-3 of Chapter I, is hereby repealed and replaced in its entirety with the following:

Sec. 2-3. Appointment of city treasurer and city attorney; terms of office; removal.

The city council shall appoint a city treasurer and a city attorney to serve and hold office at and during the pleasure of the city council. Removal of these city officers from their respective posts shall be done in the same manner as provided for in section 2-224.5 of this Code. Where the city attorney is appointed pursuant to a contract for professional services, removal of the city attorney shall be as set forth in such contract.

Section 3. Title 2 of the Costa Mesa Municipal Code is hereby amended by adding Chapter IV ½, Article 1, Sections 2-140 through 2-145, to read as follows:

#### Chapter IV ½. CITY ATTORNEY

##### Article 1. Generally

##### Sec. 2-140 – Appointment of City Attorney.

Pursuant to the provisions of California Government Code section 36505, the city attorney appointed under Section 2-3 of this Code shall perform the functions set out in California Government Code section 41801, *et seq.* The city attorney may be an individual at-will employee or city attorney services may be performed by a law firm retained by contract at the pleasure of the city council. If city attorney services are performed by a law firm, then the contract shall specify the specific attorney(s) who shall be designated by the title City Attorney and Assistant City Attorney. All other attorney employees or contractors of the law firm employed to perform city attorney services shall be considered to be deputies of the designated city attorney.

##### Sec. 2-141 – Compensation.

The city attorney shall receive such compensation as the city council shall from time to time determine and fix by resolution or contract, which compensation shall be a proper charge against funds of the city. The city council shall designate such funds.

##### Article 2. Powers and Duties

## Sec. 2-142 – Duties.

The city attorney shall advise city officials in all legal matters pertaining to city business including conflicts; frame all ordinances and resolutions required by the legislative body or under his or her own initiative; represent the city's interests in legal actions brought against the city or to select and oversee other legal counsel retained to do so; perform such other legal services as are required by this Code or by the city council from time to time; prosecute municipal code violations; prosecute misdemeanors committed within the city arising from violation of state law with the consent of the district attorney; jointly with the city manager, initiate and supervise retention of other legal counsel to provide specialized services to the City; and cooperate with and assist the city manager in administering the affairs of the city most efficiently, economically and harmoniously so far as may be consistent with his or her duties as prescribed by law and contract. If the city attorney is retained by contract, the duties, rights and obligations of the city attorney shall be as set forth in this Code and in the professional services contract.

## Sec. 2-143 -- Appointment and Delegation.

If the city attorney is an individual at-will employee, he or she shall be considered the appointing authority for such subordinate officers or employees as may be authorized by council action, subject to the approval of the city manager. If the city attorney is an individual or law firm which is an independent contractor of the City, all attorney employees or contractors of the individual law firm employed to perform city attorney services shall be considered to be deputies of the individual designated as the city attorney. The city attorney may delegate any of the powers and duties conferred upon him or her under this Code to any other officer or employee of the city or any other employee or contractor of the city attorney pursuant to a contract for professional services, or may recommend that such powers and duties be performed under contract.

## Sec. 2-144 -- Attendance at Meetings.

It shall be the duty of the city attorney or his/her designee to attend all meetings of the city council and such of its committees as he or she may deem necessary, unless excused therefrom by the city council.

## Sec. 2-145 – Reports and recommendations.

It shall be the duty of the city attorney and he or she shall have the power to make reports and recommendations as may be desirable or as requested by the city council.

Secs. 2-146 -- 2-151. Reserved.

Section 4. These provisions are declaratory of existing law in the City of Costa Mesa with respect to the rights, powers and duties of the City Attorney and the City Attorney's office.

Section 5. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 7. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this 6th day of January, 2009.

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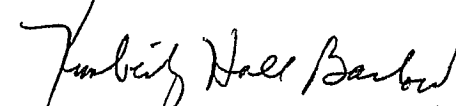
Mayor of the City of Costa Mesa

ATTEST:

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Julie Folcik, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE     ) ss  
CITY OF COSTA MESA     )

I, JULIE FOLCIK, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 08-8 was introduced and considered section by section at a regular meeting of said City Council held on the 2nd day of December, 2008, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the 6<sup>th</sup> day of January, 2009, by the following roll call vote:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 7<sup>th</sup> day of January, 2009.

\_\_\_\_\_  
JULIE FOLCIK, CITY CLERK

(SEAL)

I hereby certify that the above and foregoing is the original of Ordinance No. 08-8 duly passed and adopted by the Costa Mesa City Council at the regular meeting held on January 6, 2009, and that summaries of the Ordinance were published in the Newport Beach-Costa Mesa Daily Pilot on \_\_\_\_\_, 2008 and \_\_\_\_\_, 2009.

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JULIE FOLCIK, CITY CLERK